IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 546 OF 2004

IN

SUMMARY SUIT NO. 1509 OF 2004

Bharatkumar Mangilal Jain
& Anr. .. Plaintiffs.

vs.

M/s. Mahakali Synthetics
& Ors. .. Defendants.

Mr. Tushar Goradia for plaintiffs.
Mrs.Kiran Kanal for defendants.

CORAM : S.U. KAMDAR, J.
DATE : 10TH OCTOBER, 2005.

P.C.

. The present suit is filed on a writing at Exhibit A. However in the plaint itself the plaintiffs themselves are not abiding by the said writing because the averment is made to the following effect:-

> "The Defendants handed over to the Plaintiffs a writing dated 20th July 2001, admitting the receipt of the said amount of

> Rs. 6,50,000/- but erroneously mentioning therein that the Defendants had from time to time availed financial assistance not only from the Plaintiffs but also from their father Shri Mangilalji and the Plaintiffs' brother Shri Rakeshkumar Mangilal Jain. The Plaintiffs state that the financial assistance was availed of by the Defendants from the Plaintiffs, though the same was at the initiative of the Plaintiffs'' father and said brother."

In that view of the averments in the plaint itself, triable issues arise. In that view of the matter, the summons for judgment is dismissed. Unconditional leave to defend to the defendants.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.